STATE OF MICHIGAN

COURT OF APPEALS

GWENDER LAURY,

Plaintiff-Appellee,

v

COLONIAL TITLE COMPANY,

Defendant/Third-Party Defendant-Appellant,

and

FRANZ IVEZAJ, MARILYN E. JOHNSON, and RAYMOND DEBATES,

Defendants-Appellants,

and

DEWAYNE JOHNSON, DARRELL BOUNDS, TENCY O'CONNOR, SOFIA JUNCEVIC, JENNIFER J. KIZZAK, KAREN WHITE, TIMOTHY SMITH, CENTURY 21 REAL ESTATE, ROBERT IVEZAJ, JOHN DOE SURETY, and JOHN DOE CENTURY 21,

Defendants,

and

WILLIE BROWNLEE, RICHARD ISSA, and BERNARD ISSA,

Third-Party Plaintiffs.

UNPUBLISHED
August 25, 2009

No. 284013
Wayne Circuit Court
LC No. 04-413821-CH

Before: Cavanagh, P.J., and Markey and Davis, JJ.

PER CURIAM.

Defendants Colonial Title Company ("Colonial Title"), Franz Ivezaj, and Marilyn E. Johnson (collectively "defendants") appeal as of right from a circuit court order denying their motion for summary disposition, granting summary disposition in favor of plaintiff pursuant to MCR 2.116(I)(2), and quieting title to real property in plaintiff's favor. We affirm.

This Court reviews de novo a trial court's decision on a motion for summary disposition. *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) is properly granted if no factual dispute exists, thus entitling the moving party to judgment as a matter of law. *Rice v Auto Club Ins Ass'n*, 252 Mich App 25, 31; 651 NW2d 188 (2002). In deciding a motion brought under subrule (C)(10), a court considers all the evidence, affidavits, pleadings, and admissions in the light most favorable to the nonmoving party. *Id*. at 30-31. The nonmoving party must present more than mere allegations to establish a genuine issue of material fact for resolution at trial. *Id*. at 31. A "trial court properly grants summary disposition to the opposing party under MCR 2.116(I)(2) if the court determines that the opposing party, rather than the moving party, is entitled to judgment as a matter of law." *Washburn v Michailoff*, 240 Mich App 669, 672; 613 NW2d 405 (2000). Further, we review de novo as questions of law issues involving statutory interpretation. *Griffith v State Farm Mut Auto Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

Defendants first argue that the trial court erred by applying *Burkhardt v Bailey*, 260 Mich App 636; 680 NW2d 453 (2004), to the facts of this case. We disagree. This case involves the General Property Tax Act (GPTA), MCL 211.1 *et seq.* As recognized in *Burkhardt, supra* at 647 n 5, the Legislature has extensively amended the delinquent tax collection procedure at issue in this appeal and replaced the tax sale and redemption process with a system of forfeiture, foreclosure, and sale. See 2001 PA 94; 1999 PA 123.[1] Many of the statutes relevant to this case were repealed, effective December 31, 2003, and December 31, 2006. See *id.*; *Burkhardt, supra* at 647 nn 5 and 6. At the time relevant to this appeal, the GPTA provided for the following procedure to collect unpaid taxes:

> The county may sell real property against which taxes were assessed before January 1, 1999, but not paid. MCL 211.60. An individual who obtains an interest in real property through a tax sale, however, must perfect his title by notifying all parties that have a recorded interest in the property or that assert an ownership interest through open possession that the property has been sold for unpaid taxes. MCL 211.140(1). The notice must advise that the property may be reconveyed upon payment to the county treasurer of the redemption amount within six months after return of service of the notice. *Id.* Because this six-month period is the final redemption period, the statutory notice requirements must be strictly complied with because the tax sale proceedings serve to divest owners of their property interests. *Equivest Ltd Partnership v Foster*, 253 Mich App 450, 453-454; 656 NW2d 369 (2002); *Ottaco*, [*Inc v Kalport Dev Co, Inc*, 239 Mich App 88, 90-91; 607 NW2d 403 (1999)]. But the six-month period does not begin

[1] Effective October 20, 2005, 1999 PA 123 was repealed by 2005 PA 183.

to run until notice is given. *Equivest, supra* at 454; *Ottaco, supra* at 91. The tax purchaser's right to enforce a tax title against an individual or entity entitled to notice under § 140 is "forever barred" if the tax title holder fails to make a bona fide attempt to give the required notice within five years to that individual or entity. MCL 211.73a; *Halabu v Behnke,* 213 Mich App 598, 604; 541 NW2d 285 (1995). [*Burkhardt, supra* at 647-648 (footnotes omitted).]

MCL 211.140 provided, in relevant part:

> (1) A writ of assistance or other process for the possession of property the title to which was obtained by or through a tax sale, except if title is obtained under section 131, shall not be issued until 6 months after the sheriff of the county where the property is located files a return of service with the county treasurer of that county showing service of the notice prescribed in subsection (2). The return shall indicate that the sheriff made personal or substituted service of the notice on the following persons who were, as of the date the notice was delivered to the sheriff for service:
>
> (a) The last grantee or grantees in the regular chain of title of the property, or of an interest in the property, according to the records of the county register of deeds.
>
> (b) The person or persons in actual open possession of the land.
>
> (c) The grantee or grantees under the tax deed issued by the state treasurer for the latest year's taxes according to the records of the county register of deeds.
>
> (d) The mortgagee or mortgagees named in all undischarged recorded mortgages, or assignees of record.
>
> (e) The holder of record of all undischarged recorded liens.
>
> * * *
>
> (5) If the sheriff of the county where the property is located is unable, after careful inquiry, to ascertain the whereabouts or the post office address of the persons on whom notice may be served as prescribed in this section, service of the notice shall be made by publication.

Further, MCL 211.141 provided, in pertinent part:

> (1) The following people are entitled to receive from a person claiming title under a tax deed, or that person's heirs or assigns, within 6 months after the return of service is filed or the proof of publication of the notice is filed as prescribed in section 140, a release and quitclaim of all right and interest in the property acquired under the tax deed upon payment to the treasurer of the county in which the land is situated the amount paid for the purchase, together with an additional 50%, and personal or substituted service fees, which fees shall be the

same as provided by law for service of subpoenas, for orders of publication, or for the cost of service by certified mail, without additional cost or charge:

(a) A person with an estate in the property.

(b) A person with an interest in the property, either in fee, for life, or for years.

(c) A mortgagee of the property.

(d) An assignee of an undischarged mortgage on the property.

(e) A person who holds a lien on the property.

(f) An executor, administrator, trustee, or guardian of a person set forth in subdivisions (a) through (e).

(g) A person in actual possession of the property.

(2) A person or persons entitled to a release and quitclaim under subsection (1), after the issue of tax deeds on the property, or after the purchaser of the property is entitled to the tax deeds, and before service of notice or return of service, shall have the right to redeem the property from the sale. Redemption shall be made by paying to the treasurer of the county in which the property is situated, all sums paid as a condition of the purchase, together with an additional 50%. Upon payment, the tax title and all the certificates of sale shall become void and of no effect against the property to be redeemed.

In *Burkhardt, supra* at 650-652, this Court interpreted MCL 211.140 and MCL 211.141. The Court stated that these provisions "are in pari materia and must be construed together to ascertain the intent of the Legislature." *Id.* at 651. This Court concluded that, pursuant to the language of these provisions, "only those persons or entities entitled to notice under § 140, or their successors in interest, who continue to hold an existing interest described in § 141, have the right to redeem." *Id.* at 651-652 (emphasis deleted).

In the instant case, the trial court properly applied the holding of *Burkhardt* and determined that defendants failed to submit any evidence showing that they were entitled to notice under MCL 211.140, or were the successors in interest to those entitled to notice, in June 2000 when plaintiff delivered such notice to the sheriff for service. Regarding the June 12, 1999, deed whereby Willie Brownlee, a former agent of Constance Management, allegedly quitclaimed the property to Darrell Bounds, plaintiff submitted Brownlee's affidavit in which Brownlee denied conveying the property to Bounds and averred that his purported signature on the deed is not his actual signature. Defendants failed to present any evidence indicating that the June 12, 1999, deed was not forged. Thus, the trial court concluded that defendants failed to present any evidence establishing a genuine issue of material fact regarding whether they had a right to redeem the property. The trial court's reasoning and conclusion are sound.

Although the facts of this case and *Burkhardt* are not identical, the holding of *Burkhardt* is applicable. Defendants contend that the trial court ignored the policy behind MCL 211.140 and MCL 211.141. As recognized in *Burkhardt, supra* at 651, however, both provisions were part of the GPTA and "address[ed] the right to redeem property sold for delinquent taxes." The holding in *Burkhardt* is thus applicable in this case, which involves the right to redeem property sold at a tax sale.

Defendants contend that the trial court conflated the right to redeem with the ability to pay taxes. According to defendants, *any* person may pay property taxes on a parcel although only certain enumerated persons have a right of redemption. Defendants' reliance on MCL 211.53(1) is misplaced because the provision is irrelevant to the tax sale procedure at issue in this case. Rather, MCL 211.53 "sets forth the process by which the owner of an undivided interest in property may pay the taxes upon only the portion owned." *Johnston v City of Livonia*, 177 Mich App 200, 207; 441 NW2d 41 (1989). Defendants' reliance on MCL 211.78g(5), a current GPTA provision, is also misplaced because the provision cannot be fairly read in accordance with defendants' interpretation of the provision. In any event, even if the GPTA currently allows any person to pay taxes on a parcel, this fact would not support defendants' theory that the act provided as such at the time relevant to this case.

Moreover, this case does not involve a party's ability to pay taxes. Rather, only the right to redeem is at issue. As previously stated, MCL 211.141(2) provided:

> A person or persons entitled to a release and quitclaim under subsection (1), after the issue of tax deeds on the property, or after the purchaser of the property is entitled to the tax deeds, and before service of notice or return of service, shall have the right to redeem the property from the sale. Redemption shall be made by paying to the treasurer of the county in which the property is situated, all sums paid as a condition of the purchase, together with an additional 50%. Upon payment, the tax title and all the certificates of sale shall become void and of no effect against the property to be redeemed.

Further, as previously recognized, MCL 211.140 and MCL 211.141 allowed only those persons entitled to notice under MCL 211.140, or their successors in interest, who continue to hold an interest enumerated in MCL 211.141 to redeem. *Burkhardt, supra* at 651-652. The trial court thus properly applied *Burkhardt* and determined that none of the defendants had the right to redeem the property.

Defendants also contend that the evidence established a genuine issue of material fact regarding the superiority of Marilyn Johnson's interest in the property. Many of defendants' arguments in this regard are meritless or repetitive and we will not discuss them at length. With respect to defendants' assertion that Franz Ivezaj and Johnson were bona fide purchasers, however, we note that defendants failed to present any evidence indicating that the purported deed from Brownlee to Bounds was genuine, contrary to plaintiff's allegation and evidence establishing that the deed was forged. Because defendants have failed to offer any factual support for their claim, the evidence fails to demonstrate a genuine issue of material fact for trial. *Special Prop VI, LLC v Woodruff*, 273 Mich App 586, 590-591; 730 NW2d 753 (2007). Further, where a deed is forged, those persons who innocently acquire interests under the forged deed are in no better position than if they had acquired their interests with notice. *Id.* at 591.

In addition, defendants argue that Brownlee's affidavit is irrelevant because it predated the quitclaim deeds that the former members of Constance Management tendered to Johnson pursuant to the settlement of the members' claims against Colonial Title. Defendants' argument lacks merit because the former members of Constance Management did not redeem the property and thus could not have conveyed to Johnson any interest in the property that they did not own. See *Brownell Realty, Inc v Kelly*, 103 Mich App 690, 695; 303 NW2d 871 (1981). Accordingly, the trial court properly granted summary disposition for plaintiff and quieted title to the property in her favor.

Defendants next argue that plaintiff's quiet title action is an action in equity and that the trial court erred by failing to balance the equities in this case. Because defendants did not raise this issue below, it is not preserved. Therefore, our review is limited to plain error affecting substantial rights. *Veltman v Detroit Edison Co*, 261 Mich App 685, 690; 683 NW2d 707 (2004); *Kern v Blethen-Coluni*, 240 Mich App 333, 336; 612 NW2d 838 (2000).

The trial court did not have authority to disregard MCL 211.140 and MCL 211.141 and decide this case in defendants' favor, even if such a decision would have been more equitable. Courts may not invoke equity to avoid the application of a statute. *Stokes v Millen Roofing Co*, 466 Mich 660, 671-672; 649 NW2d 371 (2002). In any event, as this Court recognized in its previous opinion in this case, MCR 3.411(F) provides a means by which a party "who has in good faith improved property whose title is ultimately quieted in favor of another may obtain compensation for those improvements." *Laury v Colonial Title Co*, unpublished opinion per curiam of the Court of Appeals, issued May 10, 2007 (Docket No. 272727), slip op at 5. Thus, improvements to the property were not a proper consideration in determining which party has a superior claim to the property.

Finally, defendants contend that the trial court erred by denying summary disposition in their favor pursuant to MCR 2.116(C)(8) because plaintiff failed to state a prima facie quiet title claim. A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of the pleadings alone. *Johnson-McIntosh v Detroit*, 266 Mich App 318, 322; 701 NW2d 179 (2005). A motion under subrule (C)(8) is properly granted if no factual development could justify recovery under the plaintiff's claim. *Id.*

Defendants contend that plaintiff failed to allege facts that tend to establish her superior title to the property as required under MCR 3.411(B)(2)(c). A review of plaintiff's complaint, however, shows that she alleged such facts. She alleged that the property was fraudulently redeemed, that deeds recorded on or after March 13, 2002, were invalid and unenforceable, that she purchased the property at a tax sale and was issued a tax deed, that the property had not been occupied since the late 1980s, and that the assumed name of the last grantee in the regular chain of title expired in 1991. Plaintiff also alleged that the only entity with a redeemable interest, Constance Management, had not been in existence since 1991 and that Colonial Title was not entitled to redeem the property. She further outlined the series of fraudulent deeds to the property. Thus, plaintiff's complaint set forth sufficient facts to establish the priority of her claim to the property.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Alton T. Davis